

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE: ELMER L. RICHARDSON

Case No. 19-13557-JDW
Chapter 13 Proceedings

**OBJECTION OF TOWER LOAN OF MISSISSIPPI
TO CONFIRMATION OF PLAN**

Tower Loan of Mississippi, LLC, doing business as Tower Loan of Batesville (Tower), files this Objection to Confirmation of Chapter 13 Plan which plan was filed by the Debtor herein (Debtor shall mean joint petitioners as necessary) for the following reasons:

1. Debtor has filed a petition for bankruptcy pursuant to Chapter 13 of the United States Bankruptcy Code. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§157 and 1334 and 11 U.S.C. §§105 and 1325. This is a core proceeding pursuant to 28 U.S.C. §157 (b) (2)(A) and (L). Tower has filed, or will file, a proof of claim in this case as a secured creditor in the amount of \$5,832.26.

2. As collateral for the indebtedness, Debtor pledged to Tower certain personal property. A copy of the documentation evidencing Tower's lien is attached hereto.

3. Tower objects to confirmation on the basis that the Debtor has failed to schedule payment of the replacement value of the property in which Tower has a security interest at an acceptable rate of interest over the length of the Chapter 13 plan. Tower further objects to any Motions for Valuations or Claim per Section 3.2 of the plan that purports that Tower is an unsecured creditor and to any claims of exemption for any property that is not exemptible or subject to a prior intervening creditor.

4. In the event that Debtor proposes to avoid nonpossessory, non-purchase money security interest securing Tower's claim(s) on the basis it impairs exemptions to which Debtor

would be entitled under 11 U.S.C. § 522(b), and to the extent it does not, Tower denies that all of the property is exempt and objects to Debtor's claim of exemption for that property that is not exempt pursuant to Miss. Code Ann. § 85-3-1, et seq., or other applicable law.

5. Such failure is grounds for the denial of confirmation of the plan pursuant to §1325 of the Bankruptcy Code.

6. Should Debtor not be required to pay the replacement value of the collateral, then Tower requests that Tower be allowed to file an amended proof of claim as a general unsecured creditor.

WHEREFORE PREMISES CONSIDERED, Tower requests that this Court deny confirmation of the proposed plan for the reasons set forth and grant other such relief as the Court may deem proper and just.

Dated this 21st day of October, 2019.

TOWER LOAN OF MISSISSIPPI, LLC

By: /s/ Rebecca Guion Burton
Its Attorney

CERTIFICATE OF SERVICE

I do hereby certify that I have this day electronically filed with the Clerk of Court using the ECF system which sent notification, or mailed, via U.S. Mail, postage fully prepaid to non-ECF participants, a true and correct copy of the foregoing Objection of Tower Loan to Confirmation of Chapter 13 Plan to the following:

Robert Lomenick
rlomenick@gmail.com

Office of the U.S. Trustee
USTPRegion05.AB.ECF@us.doj.gov

Elmer L. Richardson
4685 Barn Acre Rd.
Sardis, MS 38666

Locke D. Barkley
ssmith@barkley13.com
Chapter 13 Trustee

Dated this the 21st day of October, 2019.

By: /s/ Rebecca Guion Burton
Its Attorney

Prepared By:

Rebecca Guion Burton
MSB#: 105059
406 Liberty Park Court
P. O. Box 320001
Flowood, MS 39232-0001
Email: gburton@towerloan.com
Telephone: 601-992-0936
Facsimile: 601-992-5176

Fill in this information to identify your case:

Debtor 1	<u>Elmer Richardson</u>
	Full Name (First, Middle, Last)
Debtor 2 (Spouse, if filing)	<u></u>
	Full Name (First, Middle, Last)
United States Bankruptcy Court for the	<u>NORTHERN DISTRICT OF MISSISSIPPI</u>
Case number: (If known)	<u></u>

☐ Check if this is an amended plan, and list below the sections of the plan that have been changed.

Chapter 13 Plan and Motions for Valuation and Lien Avoidance

12/17

Part 1: Notices

To Debtors: This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. Plans that do not comply with local rules and judicial rulings may not be confirmable. The treatment of ALL secured and priority debts must be provided for in this plan.

In the following notice to creditors, you must check each box that applies

To Creditors: Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.

You should read this plan carefully and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation on or before the objection deadline announced in Part 9 of the Notice of Chapter 13 Bankruptcy Case (Official Form 309I). The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015.

The plan does not allow claims. Creditors must file a proof of claim to be paid under any plan that may be confirmed.

The following matters may be of particular importance. Debtors must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not Included" or if both boxes are checked, the provision will be ineffective if set out later in the plan.

1.1	A limit on the amount of a secured claim, set out in Section 3.2, which may result in a partial payment or no payment at all to the secured creditor	<input checked="" type="checkbox"/> Included	<input type="checkbox"/> Not Included
1.2	Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section 3.4.	<input checked="" type="checkbox"/> Included	<input type="checkbox"/> Not Included
1.3	Nonstandard provisions, set out in Part 8.	<input checked="" type="checkbox"/> Included	<input type="checkbox"/> Not Included

Part 2: Plan Payments and Length of Plan**2.1 Length of Plan.**

The plan period shall be for a period of 60 months, not to be less than 36 months or less than 60 months for above median income debtor(s). If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in this plan.

2.2 Debtor(s) will make payments to the trustee as follows:

Debtor shall pay \$4,849.50 (☒ monthly, ☐ semi-monthly, ☐ weekly, or ☐ bi-weekly) to the chapter 13 trustee. Unless otherwise ordered by the court, an Order directing payment shall be issued to the debtor's employer at the following address:

Direct Pay

Debtor Elmer Richardson Case number _____

Joint Debtor shall pay ____ (☐ monthly, ☐ semi-monthly, ☐ weekly, or ☐ bi-weekly) to the chapter 13 trustee. Unless otherwise ordered by the court, an Order directing payment shall be issued to the joint debtor's employer at the following address:

2.3 Income tax returns/refunds.

Check all that apply

- ☒ Debtor(s) will retain any exempt income tax refunds received during the plan term.
- ☐ Debtor(s) will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all non-exempt income tax refunds received during the plan term.
- ☐ Debtor(s) will treat income refunds as follows: _____

2.4 Additional payments.

Check one.

- ☒ None. If "None" is checked, the rest of § 2.4 need not be completed or reproduced.

Part 3: Treatment of Secured Claims

3.1 Mortgages. (Except mortgages to be crammed down under 11 U.S.C. § 1322(c)(2) and identified in § 3.2 herein.).

Check all that apply.

- ☐ None. If "None" is checked, the rest of § 3.1 need not be completed or reproduced.

3.1(a) Principal Residence Mortgages: All long term secured debt which is to be maintained and cured under the plan pursuant to 11 U.S.C. § 1322(b)(5) shall be scheduled below. Absent an objection by a party in interest, the plan will be amended consistent with the proof of claim filed by the mortgage creditor, subject to the start date for the continuing monthly mortgage payment proposed herein.

1	Mtg pmts to	<u>Cenlar</u>					
Beginning	<u>December 2019</u>	@	<u>\$1,861.40</u>	<input checked="" type="checkbox"/> Plan	<input type="checkbox"/> Direct.	Includes escrow	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2	Mtg pmts to	<u>Farm Service Agency</u>					
Beginning	<u>December 2019</u>	@	<u>\$1,000.00</u>	<input checked="" type="checkbox"/> Plan	<input type="checkbox"/> Direct.	Includes escrow	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
1	Mtg arrears to	<u>Cenlar</u>	Through	<u>November 2019</u>		<u>\$343.80/month (\$20,627.89)</u>	
2	Mtg arrears to	<u>Farm Service Agency</u>	Through	<u>November 2019</u>		<u>\$299.20/month (\$17,952.00)</u>	

3.1(b) ☐ **Non-Principal Residence Mortgages:** All long term secured debt which is to be maintained and cured under the plan pursuant to 11 U.S.C. § 1322(b)(5) shall be scheduled below. Absent an objection by a party in interest, the plan will be amended consistent with the proof of claim filed by the mortgage creditor, subject to the start date for the continuing monthly mortgage payment proposed herein.

Property **-NONE-**
address: _____

Mtg pmts to _____
Beginning month _____ @ _____ Plan Direct. Includes escrow Yes No

Property **-NONE-** Mtg arrears to _____ Through _____

3.1(c) ☐ **Mortgage claims to be paid in full over the plan term:** Absent an objection by a party in interest, the plan will be amended consistent with the proof of claim filed by the mortgage creditor.

Creditor: **-NONE-** Approx. amt. due: _____ Int. Rate*: _____

Property Address: _____
Principal Balance to be paid with interest at the rate above: _____
(as stated in Part 2 of the Mortgage Proof of Claim Attachment)
Portion of claim to be paid without interest: \$ _____
(Equal to Total Debt less Principal Balance)

Debtor Elmer Richardson Case number _____Special claim for taxes/insurance: \$ -NONE- /month, beginning month.
(as stated in Part 4 of the Mortgage Proof of Claim Attachment)* Unless otherwise ordered by the court, the interest rate shall be the current Till rate in this District
Insert additional claims as needed.**3.2 Motion for valuation of security, payment of fully secured claims, and modification of undersecured claims. Check one.**☐ **None.** If "None" is checked, the rest of § 3.2 need not be completed or reproduced.
The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.☒ Pursuant to Bankruptcy Rule 3012, for purposes of 11 U.S.C. § 506(a) and § 1325(a)(5) and for purposes of determination of the amounts to be distributed to holders of secured claims, debtor(s) hereby move(s) the court to value the collateral described below at the lesser of any value set forth below or any value set forth in the proof of claim. Any objection to valuation shall be filed on or before the objection deadline announced in Part 9 of the Notice of Chapter 13 Bankruptcy Case (Official Form 309I).

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan. Unless otherwise ordered by the court, the amount of the creditor's total claim listed on the proof of claim controls over any contrary amounts listed in this paragraph.

Name of creditor	Estimated amount of creditor's total claim #	Collateral	Value of collateral	Amount of secured claim	Interest rate*
Farm Service Agency	\$4,600.00	13 cows	\$15,000.00	\$4,600.00	6.75%
Panola County Tax Collector	\$3,645.00	120 Acres in Panola County Farm Land adjacent to homestead	\$250,000.00	\$3,645.00	**See Part 8.1
Statewide Federal Credit Union	\$7,377.50	2006 Ford F-250 4WD 185,000 miles & 2016 Honda ATV	\$8,190.00	\$7,377.50	6.75%
Statewide Federal Credit Union	\$951.53	2006 Ford F-250	\$8,190.00	\$951.53	6.75%
Statewide Federal Credit Union	\$9,071.80	2006 Ford F-250	\$3,360.97	\$3,360.97	6.75%
Statewide Federal Credit Union	\$1,027.00	2015 Honda ATV	\$3,500.00	\$0.00	**See Part 8.1

Insert additional claims as needed.

#For mobile homes and real estate identified in § 3.2: Special Claim for taxes/insurance:

Name of creditor	Collateral	Amount per month	Beginning
<u>-NONE-</u>			<u>month</u>

* Unless otherwise ordered by the court, the interest rate shall be the current Till rate in this District

For vehicles identified in § 3.2: The current mileage is _____

Debtor Elmer Richardson Case number _____**3.3 Secured claims excluded from 11 U.S.C. § 506.**

Check one.

☐
☒

None. If "None" is checked, the rest of § 3.3 need not be completed or reproduced.
The claims listed below were either:

(1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or

(2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling.

Name of Creditor	Collateral	Amount of claim	Interest rate*
Statewide Federal Credit Union	2014 Lexus LS 460 55,000 miles	\$34,718.49	6.75%

*Unless otherwise ordered by the court, the interest rate shall be the current Till rate in this District.

Insert additional claims as needed.

3.4 Motion to avoid lien pursuant to 11 U.S.C. § 522.

Check one.

☐

None. If "None" is checked, the rest of § 3.4 need not be completed or reproduced.
The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

☒

The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). Unless otherwise ordered by the court, a judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan unless the creditor files an objection on or before the objection deadline announced in Part 9 of the Notice of Chapter 13 Bankruptcy Case (Official Form 309I). Debtor(s) hereby move(s) the court to find the amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5 to the extent allowed. The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). If more than one lien is to be avoided, provide the information separately for each lien.

Name of creditor	Property subject to lien	Lien amount to be avoided	Secured amount remaining	Type of lien	Lien identification (county, court, judgment date, date of lien recording, county, court, book and page number) UCC
Tower Loan Of Batesville	bowflex (\$100), Treadmill (\$100), Exercise bike (\$75), lawnmower (\$1500), weedeater (\$50), tractor with implements (\$1000), tool box (\$200), 3 TV's (\$250)	\$3,275.00	\$0.00	Non-Purchase Money Security	

Insert additional claims as needed.

3.5 Surrender of collateral.

Check one.

☐
☒

None. If "None" is checked, the rest of § 3.5 need not be completed or reproduced.
The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) request that upon confirmation of this plan the stay under 11 U.S.C. § 362(a) be terminated as to the collateral only and that the stay

Debtor Elmer Richardson Case number _____

under § 1301 be terminated in all respects. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of Creditor	Collateral
<u>Tradition Auto Sales</u>	<u>2012 Volvo VNL wrecked</u>

Insert additional claims as needed.

Part 4: Treatment of Fees and Priority Claims

4.1 General

Trustee's fees and all allowed priority claims, including domestic support obligations other than those treated in § 4.5, will be paid in full without postpetition interest.

4.2 Trustee's fees

Trustee's fees are governed by statute and may change during the course of the case.

4.3 Attorney's fees.

☒ No look fee: \$3,600.00

Total attorney fee charged: \$3,600.00

Attorney fee previously paid: \$190.00

Attorney fee to be paid in plan per confirmation order: \$3,410.00

☐ Hourly fee: \$____. (Subject to approval of Fee Application.)

4.4 Priority claims other than attorney's fees and those treated in § 4.5.

Check one.

☒ None. If "None" is checked, the rest of § 4.4 need not be completed or reproduced.

4.5 Domestic support obligations.

☒ None. If "None" is checked, the rest of § 4.5 need not be completed or reproduced.

Part 5: Treatment of Nonpriority Unsecured Claims

5.1 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata. If more than one option is checked, the option providing the largest payment will be effective. *Check all that apply.*

- ☐ The sum of \$
☐ _____% of the total amount of these claims, an estimated payment of \$____
☒ The funds remaining after disbursements have been made to all other creditors provided for in this plan.

If the estate of the debtor(s) were liquidated under chapter 7, nonpriority unsecured claims would be paid approximately \$0.00. Regardless of the options checked above, payments on allowed nonpriority unsecured claims will be made in at least this amount.

5.2 Other separately classified nonpriority unsecured claims (special claimants). *Check one.*

- ☐ None. If "None" is checked, the rest of § 5.2 need not be completed or reproduced.
☒ The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows:

Debtor	Elmer Richardson		Case number	
Name of Creditor	Basis for separate classification and treatment	Approximate amount owed	Proposed treatment	
ED Financial	Student Loans in Deferment	\$187,983.00	No Distribution	

Insert additional claims as needed.

Part 6: Executory Contracts and Unexpired Leases

6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected. Check one.

☒ None. If "None" is checked, the rest of § 6.1 need not be completed or reproduced.

Part 7: Vesting of Property of the Estate

7.1 Property of the estate will vest in the debtor(s) upon entry of discharge.

Part 8: Nonstandard Plan Provisions

8.1 Check "None" or List Nonstandard Plan Provisions

☐ None. If "None" is checked, the rest of Part 8 need not be completed or reproduced.

Under Bankruptcy Rule 3015(c), nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise included in the Official Form or deviating from it. Nonstandard provisions set out elsewhere in this plan are ineffective.

The following plan provisions will be effective only if there is a check in the box "Included" in § 1.3.

- Upon the filing of a Notice of Postpetition Mortgage Fees, Expenses, and Charges, and absent any objection being filed within 30 days after the filing of said Notice, the Trustee is authorized to pay the amount contained in the Notice as a special claim over the remaining plan term and adjust the plan payment accordingly.
- The claim of Panola County Chancery Clerk/Tax Assessor for property taxes shall be paid directly by the Debtor.
- The claims of Statewide FCU are all cross-collateralized, and there is no value left in the collateral to pay the remaining claims of Statewide FCU as a secured creditor.

Part 9: Signatures:

9.1 Signatures of Debtor(s) and Debtor(s)' Attorney

The Debtor(s) and attorney for the Debtor(s), if any, must sign below. If the Debtor(s) do not have an attorney, the Debtor(s) must provide their complete address and telephone number.

X /s/ Elmer Richardson

Elmer Richardson

Signature of Debtor 1

X

Signature of Debtor 2

Executed on **September 3, 2019**

Executed on

4685 Barn Acre Rd

Address

Batesville MS 38606-0000

City, State, and Zip Code

Telephone Number

Address

City, State, and Zip Code

Telephone Number

X /s/ Robert H. Lomenick

Robert H. Lomenick 104186

Signature of Attorney for Debtor(s)

126 North Spring Street

Post Office Box 417

Holly Springs, MS 38635

Date **September 3, 2019**

Debtor Elmer Richardson Case number

Address, City, State, and Zip Code

662-252-3224

Telephone Number

rlomenick@gmail.com

Email Address

104186 MS

MS Bar Number

THIS DOCUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF BANK OF AMERICA N.A. AS AGENT
US 100 0222181

File Number

Date Filed: 10/1/2018 3:45:42 PM

C. Delbert Hosemann, Jr.

Secretary of State

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)	
First Tower Corp	601-992-0153
B. EMAIL CONTACT AT FILER (optional)	
dale@towerloan.com	
C. SEND ACKNOWLEDGMENT TO: (Name and Address)	
<div style="border: 1px solid black; padding: 10px; text-align: center;"> FIRST TOWER CORP. P O BOX 320001 FLOWOOD, MS 39232-0001 </div>	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor Name (1a or 1b) (use exact, full name; do not omit, modify or abbreviate any part of the Debtor's Name); If any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION NAME				
OR				
1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
RICHARDSON	ELMER	L		
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
4685 BARNACRE RD	SARDIS	MS	38666-5200	USA

2. DEBTOR'S NAME: Provide only one Debtor Name (2a or 2b) (use exact, full name; do not omit, modify or abbreviate any part of the Debtor's Name); If any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION NAME				
OR				
2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION NAME				
TOWER LOAN OF MISSISSIPPI, LLC				
OR				
3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
P O BOX 1647	BATESVILLE	MS	39568	USA

4. COLLATERAL: This financing statement covers the following collateral:

TREADMILL, BOWFLEX, 60" ZERO TURN MOWER, ECHO, CRAFTSMAN, 55" VIZIO FLAT SCREEN, 42" VIZIO FLAT SCREE
3RD, 32" VIZIO FLAT, 1086 INTERNATIONAL TRACTOR, BUSH HOG,

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad Item 17 and instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative	
6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public Finance Transaction <input type="checkbox"/> Manufactured Home Transaction <input type="checkbox"/> A Debtor Is a Transmitting Utility	6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing
7. ALTERNATIVE DESIGNATION (if applicable) <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensor	
8. OPTIONAL FILER REFERENCE DATA	